



DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)  
Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval  
of Maine State Plan Amendments (SPA) 12-010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Notice of Hearing

SUMMARY: This notice announces an administrative hearing to be held on May 23, 2013, at the CMS Boston Regional Office, JFK Federal Building, 15 N. Sudbury Street, Room 2050, Boston, Massachusetts 02203-0003 to reconsider CMS' decision to disapprove Maine SPA 12-010.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT:

Benjamin Cohen, Presiding Officer  
CMS  
2520 Lord Baltimore Drive  
Suite L  
Baltimore, Maryland 21244  
Telephone: (410) 786-3169

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove Maine SPA 12-010 which was submitted on August 1, 2012, and disapproved on January 7, 2013. The SPA proposed changes to eligibility for parents, caretaker relatives, and children whose income is at or below 133 percent of the federal poverty level (FPL). The proposal would make eligibility standards, methods, and procedures more restrictive than those in effect on March 23, 2010.

CMS disapproved this SPA after consulting with the Secretary as required by 42 CFR 430.15(c)(2) because it appeared the proposal would have eliminated Medicaid eligibility for parents and caretaker relatives eligible under sections 1902(a)(10)(A)(i)(I) and 1931 whose incomes are between 100 percent and 133 percent of the FPL, and Medicaid eligibility of certain individuals considered “children” under Maine’s state Medicaid plan. Both proposals constituted more restrictive eligibility standards than those in effect in Maine as of March 23, 2010, that could not be excepted from the maintenance-of-effort (MOE) mandate that Maine is subject to under section 1902(a)(74) and (gg) of the Social Security Act (hereafter “the Act”). At issue in this appeal are the following issues.

While states generally have authority to modify Medicaid eligibility rules, sections 1902(a)(74) and (gg) of the Act require that states maintain eligibility standards, methodologies, and procedures that are no more restrictive than those in effect under a state’s plan as of the date of enactment of the Patient Protection and Affordable Care Act (March 23, 2010). This MOE requirement applies to adults until a state’s health insurance exchange is operational (January 1, 2014) and to children until October 1, 2019.

Section 1902(gg)(3) of the Act offers a partial non-application of the MOE requirement during the period between January 1, 2011, and December 31, 2013, when a state certifies to the Secretary that it has a budget deficit during the fiscal year for which it is seeking a non-application, or projects a budget deficit during the succeeding fiscal year. This provision limits the non-application to “nonpregnant, nondisabled adults who are eligible for medical assistance under the state plan or under a waiver of the plan at the option of the state and whose income exceeds 133 percent of the poverty line.”

Maine certified a projected budget deficit for state fiscal year 2013 in December 2011 and requested a non-application of the MOE requirement for the period of July 1, 2012, through June 30, 2013. On February 10, 2012, CMS notified Maine that it qualified for the non-application for the requested period.

Maine submitted SPA #12-010 on August 1, 2012, which proposed changes to its Medicaid eligibility rules for parents, caretaker relatives, children, and to Medicare savings programs (MSPs). Specifically, Maine proposed: reducing the income eligibility limit from 150 percent of the FPL to 100 percent for parents and caretaker relatives who may qualify under section 1902(a)(10)(A)(i)(I) and 1931 of the Act; lowering the age limit of eligibility from 20 to 18 for children who meet the eligibility requirements for the aid to families with dependent children (AFDC) state plan but who would not have received AFDC based on age; and reducing income eligibility for the MSPs through the elimination of certain income disregards. Maine eventually split the SPA into two, with the proposal relating to families, caretaker relatives, and children identified as SPA #12-010, and the proposal relating to MSPs identified as SPA #12-010A.

On January 7, 2013, CMS approved SPA #12-010A, but disapproved SPA #12-010. CMS determined that Maine's SPAs proposed eligibility rules more restrictive than Maine's rules in effect on March 23, 2010. However, due to Maine's FY 2013 budget deficit certification, CMS determined that non-application of the MOE requirement could apply to the changes to the MSP eligibility rules in SPA #12-010A. (The SPA will be effective only through June 30, 2013, unless the state certifies that in the fiscal year beginning July 1, 2013, it again projects a budget deficit.) CMS concluded that SPA #12-010A did not reduce eligibility for any group of individuals

eligible for Medicaid on the basis of a disability, pregnancy, or status as a child. (On February 20, 2013, Louis Bourgoïn and others filed suit in the United States District Court for the District of Maine against the U.S. Department of Health & Human Services seeking to set aside the agency's approval of Maine SPA#12-010A.)

However, CMS determined that Maine was not permitted an exception from the MOE for the eligibility rule changes proposed by SPA #12-010. The changes proposed by SPA #12-010 applied to individuals who are exempted from the non-application provisions of the MOE requirement, specifically, adults whose incomes are below 133 percent of the FPL and children.

Section 1116 of the Act and federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Maine announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mary C. Mayhew, Commissioner  
Department of Health and Human Services  
Commissioner's Office  
221 State Street  
11 State House Station  
Augusta, ME 04333-0011

Dear Ms. Mayhew:

I am responding to your request for reconsideration of the decision to disapprove the Maine State Plan Amendment (SPA) 12-010 which was submitted on August 1, 2012, and disapproved on January 7, 2013. The SPA proposed changes to eligibility for parents, caretaker relatives, and children whose income is at or below 133 percent of the federal poverty level (FPL). The proposal would make eligibility standards, methods, and procedures more restrictive than those that were in effect on March 23, 2010.

I disapproved Maine SPA 12-010 because the proposal would have eliminated Medicaid eligibility for parents and caretaker relatives eligible under sections 1902(a)(10)(A)(i)(I) and 1931 whose incomes are between 100 percent and 133 percent of the FPL, and Medicaid eligibility of certain individuals considered "children" under Maine's state Medicaid plan. Both proposals constituted more restrictive eligibility

standards than those in effect in Maine as of March 23, 2010, that could not be excepted from the maintenance-of-effort (MOE) mandate that Maine is subject to under section 1902(a)(74) and (gg) of the Social Security Act (hereafter “the Act”). At issue in this appeal are the following issues, which are more detailed than set out in the disapproval letter:

While states generally have authority to modify Medicaid eligibility rules, sections 1902(a)(74) and (gg) of the Act require that states maintain eligibility standards, methodologies, and procedures that are no more restrictive than those in effect under a state’s plan as of the date of enactment of the Patient Protection and Affordable Care Act (March 23, 2010). This MOE requirement applies to adults until a state’s health insurance exchange is operational (January 1, 2014) and to children until October 1, 2019.

Section 1902(gg)(3) of the Act offers a partial non-application of the MOE requirement during the period between January 1, 2011, and December 31, 2013, when a state certifies to the Secretary that it has a budget deficit during the fiscal year for which it is seeking a non-application, or projects a budget deficit during the succeeding fiscal year. This provision limits the non-application to “nonpregnant, nondisabled adults who are eligible for medical assistance under the state plan or under a waiver of the plan at the option of the state and whose income exceeds 133 percent of the poverty line.”

Maine certified a projected budget deficit for state fiscal year 2013 in December 2011 and requested a non-application of the MOE requirement for the period of July 1, 2012, through June 30, 2013. On February 10, 2012, the Centers for Medicare & Medicaid Services (CMS) notified Maine that it qualified for the non-application for the requested period.

Maine submitted SPA #12-010 on August 1, 2012, which proposed changes to its Medicaid eligibility rules for parents, caretaker relatives, children, and to Medicare savings programs (MSPs). Specifically, Maine proposed: reducing the income eligibility limit from 150 percent of the FPL to 100 percent for parents and caretaker relatives who may qualify under section 1902(a)(10)(A)(i)(I) and 1931 of the Act; lowering the age limit of eligibility from 20 to 18 for children who meet the eligibility requirements for the aid to families with dependent children (AFDC) state plan but who would not have received AFDC based on age; and reducing income eligibility for the MSPs through the elimination of certain income disregards. Maine eventually split the SPA into two, with the proposal relating to families, caretaker relatives and children identified as SPA #12-010, and the proposal relating to MSPs identified as SPA #12-010A.

On January 7, 2013, CMS approved SPA #12-010A, but disapproved SPA #12-010. CMS determined that Maine's SPAs proposed eligibility rules more restrictive than Maine's rules in effect on March 23, 2010. However, due to Maine's FY 2013 budget deficit certification, CMS determined that non-application of the MOE requirement could apply to the changes to the MSP eligibility rules in SPA #12-010A. (The SPA will be effective only

through June 30, 2013, unless the state certifies that in the fiscal year beginning July 1, 2013, it again projects a budget deficit.) CMS concluded that SPA #12-010A did not reduce eligibility for any group of individuals eligible for Medicaid on the basis of a disability, pregnancy, or status as a child. (On February 20, 2013, Louis Bourgoïn and others filed suit in the United States District Court for the District of Maine against the U.S. Department of Health & Human Services seeking to set aside the agency's approval of Maine SPA#12-010A.)

However, CMS determined that Maine was not permitted an exception from the MOE for the eligibility rule changes proposed by SPA #12-010. The changes proposed by SPA #12-010 applied to individuals who are exempted from the non-application provisions of the MOE requirement, specifically, adults whose incomes are below 133 percent of the FPL and children.

In its letter of disapproval, CMS responded to Maine's claim that *National Federation of Independent Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566 (2012), directed approval of the SPA. CMS pointed out that the Supreme Court did not strike down any provision of the Patient Protection and Affordable Care Act, including the MOE requirement, and that the MOE requirement is unrelated to the Medicaid eligibility expansion.

I am scheduling a hearing on your request for reconsideration to be held on May 23, 2013, at the CMS Boston Regional Office, JFK Federal Building, 15 N. Sudbury Street, Room 2050, Boston, Massachusetts 02203-0003 to reconsider CMS' decision to disapprove Maine SPA #12-010.



If this date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner

Acting Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)  
(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance  
Program.)

Dated: April 4, 2013

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Marilyn Tavenner

Acting Administrator

Centers for Medicare & Medicaid Services

**BILLING CODE 4120-01-P**

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